



## **SMALL BUSINESS ADMINISTRATION**

**[Docket No.: SBA-2020-0048]**

### **Termination of Nonmanufacturer Rule Class Waiver**

**AGENCY:** Small Business Administration.

**ACTION:** Notification of termination of the class waiver to the Nonmanufacturer Rule for radiology equipment.

**SUMMARY:** The U.S. Small Business Administration (SBA) is terminating a class waiver of the Nonmanufacturer Rule (NMR) for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under manufacturing categorized under North American Industry Classification System (NAICS) code 334517 and Product Service Code (PSC) 6525. As the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal contracting officer obtains an individual waiver to the NMR.

**DATES:** Termination of the class waiver is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Carol Hulme, Attorney Advisor, by telephone at 202-205-6347 or by email at [Carol-Ann.Hulme@sba.gov](mailto:Carol-Ann.Hulme@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business set-aside or sole source contract, Historically Underutilized Business Zone set-aside or sole source contract,

women-owned small business or economically disadvantaged women-owned small business set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold but continues to apply to socioeconomic set-aside and sole source acquisitions over the micro-purchase threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market. SBA identifies a “class of products” based on a combination of the six-digit NAICS code and a description of the class of products. As implemented in SBA’s regulations at 13 CFR 121.1202(c), to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

In accordance with the SBA’s regulations at 13 CFR 121.1204(a)(7), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, SBA will announce its intent to terminate the NMR waiver for a class of products. 13 CFR 121.1204(a)(7)(ii). Unless public comment reveals no small business exists for the class of products in question, SBA will publish a Final Notice of Termination in the Federal Register.

On October 31, 2007, SBA published in the Federal Register a notice of intent to waive the NMR for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies) with NAICS code 334517 and PSC 6525. The comments submitted in response failed to establish the existence of a small business manufacturer of these products. As such, on December 26, 2007, after the comment and notice period passed, SBA issued a class waiver for those products effective January 10, 2008. That notice can be found at 77 FR 73057. Effective January 5, 2022, SBA ceased using PSCs to classify products covered by class waivers.

On April 20, 2020, SBA received a request to terminate the previously issued waiver under NAICS code 334517 for Irradiation Apparatus Manufacturing. The requester provided information that established the existence of a small business manufacturer of the identified products. On February 15, 2022, SBA published notice of its intent to terminate the class waiver with the public comment period closing on March 9, 2022. That notice can be found at 87 FR 8630. However, there were no comments submitted.

Thus, SBA is terminating the class waiver for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under NAICS code 334517. As the above-identified class waiver is terminated, small businesses will need to comply with the NMR where applicable, unless a Federal Contracting Officer obtains an individual waiver to the NMR.

More information on the NMR and class waivers can be found at

<https://www.sba.gov/partners/contracting-officials/small-business-procurement/nonmanufacturer-rule>.

**Wallace D. Sermons II,**

*Acting Director,*

*Office of Government Contracting.*

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